Supreme Court, U.S.
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No. 98-

IN THE

Supreme Court of the United States
OCTOBER TERM, 1998

JAMES E. PIETRANGELO, II

Petitioner,

v.

UNITED STATES SENATE

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JAMES E. PIETRANGELO, II
Pro Se Petitioner
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April 29, 1999

12PP

QUESTIONS PRESENTED

1. Did at least thirty-two Senators violate Art. I, § 3's Oath Clause, and Art. II, § 4's Duty to Convict and Remove Clause, of the Constitution, by voting "not guilty" as to the Impeachment Articles in President Clinton's Impeachment Trial even though those Senators clearly and as a matter of public record thought that President Clinton committed (the) acts charged in those Articles?

2. Did all of the Senators violate Art. II, § 4's Duty to Convict and Remove Clause, of the Constitution, by ordering, adjudging, and communicating a judgment of acquittal in President Clinton's Impeachment Trial even though two-thirds of those Senators thought President Clinton "guilty" as to the Impeachment Articles?

3. Did the District Court err in dismissing Pietrangelo's suit against the Senators -- alleging these violations of Art. I, § 3, and of Art. II, § 4 -- based on Speech or Debate Clause immunity?

PARTIES TO THE PROCEEDING

The petitioner in this case is James E. Pietrangelo, II.

The respondents are Spencer Abraham, Daniel K. Akaka, Wayne Allard, John Ashcroft, Max Baucus, Evan Bayh, Robert F. Bennett, Joseph R. Biden, Jr., Jeff Bingaman, Christopher S. Bond, Barbara Boxer, John B. Breaux, Sam Brownback, Richard H. Bryan, Jim Bunning, Conrad R. Burns, Robert C. Byrd, Ben Nighthorse Campbell, John H. Chafee, Max Cleland, Thad Cochran, Susan M. Collins, Kent Conrad, Paul Coverdell, Larry E. Craig, Michael D. Crapo, Thomas A. Daschle, Mike DeWine, Christopher J. Dodd, Pete V. Domenici, Byron L. Dorgan, Richard J. Durbin, John Edwards, Michael B. Enzi, Russell D. Feingold, Dianne Feinstein, Peter Fitzgerald, Bill Frist, Slade Gorton, Bob Graham, Phil Gramm, Rod Grams, Charles E. Grassley, Judd Gregg, Chuck Hagel, Tom Harkin, Orrin G. Hatch, Jesse Helms, Ernest F. Hollings, Y. Tim Hutchinson, Kay Bailey Hutchison, James M. Inhofe, Daniel K. Inouye, James M. Jeffords, Tim Johnson, Edward M. Kennedy, Robert J. Kerrey, John F. Kerry, Herb Kohl, John Kyl, Mary L. Landrieu, Frank R. Lautenberg, Patrick J. Leahy, Carl Levin, Joseph I. Lieberman, Blanche Lincoln, Trent Lott, Richard G. Lugar, Connie Mack, John McCain, Mitch McConnell, Barbara A. Mikulski, Daniel Patrick Moynihan, Frank H. Murkowski, Patty Murray, Don Nickles, Jack Reed, Harry Reid, Charles S. Robb, Pat Roberts, John D. Rockefeller, IV, William V. Roth, Jr., Rick Santorum, Paul S. Sarbanes, Charles E. Schumer, Jeff Sessions, Richard C. Shelby, Bob Smith, Gordon H. Smith, Olympia J. Snowe, Arlen Specter, Ted Stevens, Craig Thomas, Fred Thompson, Strom Thurmond, Robert G. Torricelli, George Voinovich, John W. Warner, Paul D. Wellstone, and Ron Wyden.

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PETITION FOR A WRIT OF CERTIORARI

James E. Pietrangelo, II respectfully petitions for a writ of certiorari to review his entire case as well as the order of the United States District Court for the Northern District of Ohio, Eastern Division in this case.

OPINIONS BELOW

This case is currently pending before judgment in the Court of Appeals for the Sixth Circuit. The order of the District Court, attached at Appendix, is unreported.

JURISDICTION

On March 18, 1999, the District Court entered an order (docket entry no. 7) dismissing Pietrangelo's case. Pietrangelo timely appealed the order to the Court of Appeals for the Sixth Circuit, where his case is now pending. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1); U.S. Sup. Ct. R. 11; and *Duignan v. United States*, 274 U.S. 195, 200 (1927), which allows review of questions not pressed or passed upon below in exceptional cases. Notice of service required by U.S. Sup. Ct. R. 29.4(b) & (c) has been made.

CONSTITUTIONAL PROVISIONS

Art. I, § 3, cl. 6 provides in relevant part that:

> When sitting for that Purpose [Impeachment Trial], they [the Senate] shall be on Oath or Affirmation.

U.S. Const., Art. I, § 3, cl. 6. Art. II, § 4 provides that:

> The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

U.S. Const., Art. II, § 4.

STATEMENT OF THE CASE

This case involves the Impeachment Trial of President Clinton and facts therein which may already be known by this Court. During the Trial, certain Senators publicly stated either that they believed that President Clinton had given false testimony and/or that he had impeded evidence in a judicial proceeding, or that he had committed perjury and/or obstructed justice. On February 12, 1999, immediately after voting "not guilty" as to the Impeachment Articles, thirty-two Senators sponsored a Censure containing numerous statements, including that President Clinton "gave false or misleading testimony and his actions have had the effect of impeding discovery of evidence in judicial proceedings[.]" Because the Senators' public statements and Censure mirrored the Impeachment Articles, which respectively charged that President Clinton "willfully provided perjurious, false and misleading testimony" and "prevented, obstructed, and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding[,]" Pietrangelo filed an amended complaint for declaratory relief against all the Senators on March 4, 1999. Pietrangelo alleged that at least the thirty-two Senators had violated Art. I, § 3's Oath Clause by voting "not guilty" when they in fact believed that President Clinton was guilty, and that all the Senators had violated Art. II, § 4's Duty to Convict and Remove Clause, by ordering, adjudging, and communicating a judgment of acquittal even though two-thirds of the Senate (those who voted guilty plus the thirty-two) in fact believed that President Clinton was guilty. The District Court had jurisdiction under 28 U.S.C. 1331 and 28 U.S.C. 2201(a).

On March 18, 1999, the District Court entered an order dismissing Pietrangelo's suit on the basis of Speech or Debate Clause immunity. Pietrangelo appealed the order to the Court of Appeals, arguing that Speech or Debate Clause immunity was inapplicable to

the Senators in his suit because the Senators had violated a constitutional provision affecting separation of powers and there was no one else to sue and no other remedy to seek. The case is now pending in the Court of Appeals.

Due to the exceptional nature of this case, and the imperative public importance of immediately settling these fundamental questions before (more) irreparable harm is done to this Nation, Pietrangelo is petitioning this Court to review his entire case, before judgment in the Court of Appeals.

REASONS FOR GRANTING THE WRIT

The Senators have clearly violated specific provisions of the Constitution.

The Senators have violated provisions that are clearly part of the framework of the separation of powers of our system of government. Co-equality and independence for all three branches -- the Executive, Legislature, and Judiciary -- has been, by definition, undermined.

The Senate undermined the Legislative legitimacy.

The Senate allowed President Clinton -- the Executive -- to be "above the law," because they failed to hold him accountable for his undeniable perjury and obstruction of justice, for which no one else will prosecute him either while he is chief law enforcement officer or afterwards. With President Clinton "above the law," the social contract of democracy that binds all citizens is, by definition, broken. Now that President Clinton is free of the constraints of the law, he is totally above the law, so much so that he did not respond to what any reasonable person would say was a citizen's credible charge of rape against him. This undermines the Executive.

The Judiciary's legitimacy and authority have been seriously undermined. President Clinton conspicuously held himself above the law when he -- a lawyer, former state attorney-general, former constitutional law professor, and chief law enforcement officer --

deliberately (and with a smirk) flaunted judicial laws and decisions. Then, in plain and conspicuous view of this Nation (including its children), the Senators disregarded their constitutional duty and the Constitution when they decided that President Clinton should be "censured" rather than convicted, even though he was guilty of the crimes or facts charged and even though ordinary citizens could not so avoid prosecution. These clear and brazen violations of the Law flaunt and are in contradiction to the principle which this Court has repeatedly and proudly declared as a standard -- that "no man is above the law":

> We have no king to whom [the notion that the king can do no wrong] can be applied. The President, in the exercise of the executive functions, bears a nearer resemblance to the limited monarch of the English government than any other branch of our government, and is the only *individual* to whom it could possibly have any relation. It cannot apply to him, because the Constitution admits that he may do wrong, and has provided, by the proceeding of impeachment, for his trial for wrong-doing, and his removal from office if found guilty.

Langford v. United States, 101 U.S. 341, 343 (1879) (Emphasis in the original);

> Under our system the *people*, who are [in England] called *subjects*, are the sovereign. Their rights, whether collective or individual, are not bound to give way to a sentiment of loyalty to the person of the monarch. The citizen here [in the United States] knows no person, however near to those in power, or however powerful himself, to whom he need yield the rights which the law secures to him when it is well administered.
>
> * * *
>
> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with immunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are abound to obey it.

> It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.

United States v. Lee, 106 U.S. 196, 208, 220 (1882) (Emphasis in the original);

> The doctrine [of a truly independent sovereign] . . . had its origins in the feudal system. * * * Since the King was at the apex of the feudal pyramid, there was no higher court in which he could be sued. The King's immunity rested primarily on the structure of the feudal system and secondarily on a fiction that the King could do no wrong.
>
> We must, of course, reject the fiction. It was rejected by the colonists when they declared their independence from the Crown . . . .

Nevada v. Hall, 440 U.S. 410, 415 (1979).

Unless this Court reviews this entire case, our branches of government will remain broken and our democracy will be in name only. This is not a second bite at the impeachment apple; there never was a first bite, because clearly the Senators unconstitutionally untruly voted that President Clinton was "not guilty." The cost of reviewing this case will clearly be high, but not so high as that of abandoning the principle that "no man is above the law."

This Court must hear this case for the sake of restoring our democratic way of life.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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(440) 808-4591/0809

April 29, 1999

APPENDIX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

James E. Pietrangelo, II,	)	**CASE NO. 1:99 CV 323**
	)	
Plaintiff,	)	**JUDGE PATRICIA A. GAUGHAN**
	)	
vs.	)	
	)	
United States Senate,	)	**Order**
	)	
Defendant.	)	

Plaintiff, James E. Pietrangelo, II, filed this Complaint for Declaratory Relief against the United States Senate, Individually and Together Sitting as a Court of Impeachment, relative to the Impeachment Trial of President William Clinton in the United States Senate. Plaintiff seeks relief in the form of a declaration from this Court that "it would be unconstitutional for a Senator to not vote to convict President Clinton when he or she believes or finds that President Clinton has committed the acts charged. . ." Further, plaintiff requests that "the Court declare that perjury and obstruction of justice are 'high Crimes and Misdemeanors' for which a President may be convicted and removed from office."

Plaintiff filed an Amended Complaint for Declaratory Judgment following the acquittal of President Clinton by the Senate. Plaintiff requests that this Court declare that those Senators who voted to acquit President Clinton did so unconstitutionally and that President Clinton was actually convicted of the charges. Therefore, plaintiff requests that this Court declare that the Senate "should have ordered and adjudged that President Clinton was convicted."

The Speech or Debate Clause of the United States Constitution, Article I, Section 6, Clause 1, provides that "The Senators and Representatives shall. . .for any Speech or Debate in either House. . .not be questioned in any other Place." This "separation of powers safeguard secures against executive or judicial interference the processes of the nation's elected representatives leading up to the formation of legislative policy and the enactment of laws." *McSurely v. McClellan*, 753 F.2d 88, 105 (D.C. Cir. 1985) (citations omitted). This Clause "extends absolute immunity to members of Congress for 'voting. . ." *Id.* The Clause, "designed to preserve the independence and integrity of the Legislative Branch, has been read broadly to effectuate its purposes, including within its protective sweep those activities which are generally done in a session of the House by one of its members in relation to the business before it." *McSurely v. McClellan*, 553 F.2d 1277 (D.C. Cir. 1976), citing *United States v. Johnson*, 383 U.S. 169 (1966) and *Kilbourn v. Thompson*, 103 U.S. 168 (1880).

Pursuant to the Speech or Debate Clause this case is hereby dismissed.

IT IS SO ORDERED.

/signed/

PATRICIA A. GAUGHAN
United States District Judge

Supreme Court, U.S.
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No. 98–1790

In the Supreme Court of the United States

OCTOBER TERM, 1998

JAMES E. PIETRANGELO, II, PETITIONER,

v.

UNITED STATES SENATE, ET AL., RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS UNITED STATES SENATE, ET AL. IN OPPOSITION TO THE PETITION FOR CERTIORARI

MORGAN J. FRANKEL,
(Counsel of Record),
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Counsel for Respondents.

MAY 1999.

QUESTIONS PRESENTED

1. Whether the district court properly applied the Speech or Debate Clause (art. I, sec. 6, cl. 1) to dismiss this action, which seeks to question the Senate and its Members about their votes in President Clinton's impeachment trial.

2. Whether plaintiff's lack of Article III standing and the constitutional commitment to the Senate of the sole power to try impeachments (art. I, sec. 3, cl. 6) also bar this action challenging the Senate's acquittal of President Clinton.

In the Supreme Court of the United States

OCTOBER TERM, 1998

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BRIEF FOR RESPONDENTS UNITED STATES SENATE, ET AL. IN OPPOSITION TO THE PETITION FOR CERTIORARI

Respondents United States Senate and all Members of the Senate submit this brief in opposition to the petition for a writ of certiorari before judgment filed by petitioner James E. Pietrangelo, II.

STATEMENT OF THE CASE

This petition arises out of a complaint filed in the United States District Court for the Northern District of Ohio on February 10, 1999, while the Senate, pursuant to Article I, Section 3, Clause 6 of the Constitution, was trying the impeachment of President Clinton. The complaint sought declaratory and injunctive relief concerning the Senate's conduct of the impeachment trial. After the Senate acquitted the President and adjourned the trial on February 12, 1999, the plaintiff amended his complaint on March 4, 1999, to add all Senators as defendants and to challenge particular Senators' votes on the two articles of impeachment.

Specifically, the plaintiff alleged that at least thirty-two Senators who voted "not guilty" nevertheless demonstrably believed, as evidenced principally by their support of a resolution of censure, that the President in fact had committed the offenses charged by the House of Representatives in the articles of impeachment. Amended Complaint at 4. On this basis the plaintiff sought a declaratory judgment that the Senate had "actually convicted" President Clinton. *Id.* at 8. The plaintiff predicated his standing on assertions that the Senate's acquittal of the President had deprived the plaintiff of his rights, as a citizen, to the "rule of law, equal protection and justice, due process, and democracy." *Id.* at 6, 7, 8.

Acting *sua sponte*, the district court dismissed the amended complaint on March 17, 1999, on the basis that the Constitution's Speech or Debate Clause, Article I, Section 6, Clause 1, affords Members of Congress absolute immunity for their votes. App. to Cert. Petition at 2. The plaintiff noticed his appeal to the United States Court of Appeals for the Sixth Circuit on March 26, 1999, and filed his opening brief in the court of appeals on April 19, 1999. This petition for certiorari before judgment followed on May 3, 1999. Respondents' brief in the court of appeals is due May 26, 1999.

REASONS FOR DENYING THE WRIT

The petition for a writ of certiorari before judgment should be denied because it fails to show "that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." Sup. Ct. Rule 11. Here, the court of appeals remains the appropriate and efficient forum for appellate review of the district court's straightforward and inescapable judgment that the Speech or Debate Clause provided an absolute bar to this lawsuit. Had the Speech or Debate Clause not provided a basis for the district court to dismiss this action *sua sponte*, principles of both Article III standing and the political question doctrine would also have prohibited

reaching petitioner's claims. The clear application of these settled legal principles to this case means that it would not present any "compelling reason" for even a post-judgment grant of certiorari under Rule 10. *A fortiori*, this case does not amount to that exceptionally rare occurrence in which the Court should review a case still pending in the court of appeals in order to resolve an issue of great constitutional significance. *E.g., Mistretta v. United States*, 488 U.S. 361, 371 & n.6 (1989) (addressing constitutionality of Federal Sentencing Commission to rectify "disarray" in lower court decisions).

I. The Speech or Debate Clause provides: "for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place." U.S. Const. art. 1, § 6, cl. 1. This Clause provides an absolute protection against judicial inquiry into "'the deliberative and communicative processes . . . with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.'" *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 504 (1975) (quoting *United States v. Gravel*, 408 U.S. 606, 625 (1972)). The Court has specifically held that the Clause prohibits lawsuits against Members for their acts of voting on matters pending before the Senate. *See Gravel*, 408 U.S. at 624; *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1881).

The amended complaint alleges that thirty-two Senators violated their constitutional oath when they voted "not guilty" on each of the two articles of impeachment then pending before the Senate. This claim patently seeks to question Members of the Senate about their votes in exercising their exclusive constitutional duty "to try all Impeachments." U.S. Const. art. 1, § 3, cl. 6. Accordingly, the district court properly dismissed this case, because the Speech or Debate Clause "'extends absolute immunity to members of Congress for voting'"on a matter that the Constitution places before the Senate. App. to Cert.

Petition at 2 (quoting *McSurely v. McClellan*, 753 F.2d 88, 105 (D.C. Cir. 1985)).

II. The district court properly proceeded immediately to the applicability of the Speech or Debate Clause because the Clause protects Members "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (per curiam); *see Eastland v. United States Servicemen's Fund*, 421 U.S. at 511 n.17. Had the Speech or Debate Clause not provided respondents with an absolute immunity, both principles of Article III standing and the political question doctrine would have independently precluded this action.

On its face, petitioner's asserted injury (that respondents deprived him of his rights as a citizen to the "rule of law, equal protection and justice, due process, and democracy," Amended Complaint at 6, 7, 8) is a prototypical example of a "generalized grievance[] about the conduct of government" that fails to satisfy the requirements of Article III. *Flast v. Cohen*, 392 U.S. 83, 106 (1968); *see Allen v. Wright*, 468 U.S. 737, 751, 753–56 (1984); *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Petitioner's concerns about harm "to this Nation," Cert. Petition at 3, and "restoring our democratic way of life," *id.* at 5, amount to no more than allegations of "abstract injury in nonobservance of the Constitution." *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 220–27 & n.13 (1974). The district court therefore lacked Article III jurisdiction over the complaint.

Further, petitioner's request for judicial review of Senators' votes in an impeachment trial presents a nonjusticiable political question, given the Constitution's "textually demonstrable constitutional commitment," *Baker v. Carr*, 369 U.S. 186, 217 (1962), to the Senate of the "sole Power to try all Impeachments," U.S. Const. art. 1, § 3, cl. 6. *See Nixon v. United States*, 506 U.S. 224 (1993).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari before judgment should be denied.

Respectfully submitted,

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(Counsel of Record),
Acting Senate Legal Counsel,
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MAY 1999.

○

(3)

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UNITED STATES SENATE

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONER'S REPLY BRIEF

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May 19, 1999

8pp

REPLY BRIEF

Pursuant to S. Ct. R. 15.6, petitioner James E. Pietrangelo, II ("Pietrangelo") submits this Reply to Respondents' Brief in Opposition.

ARGUMENT

In his Petition for Writ of Certiorari, Pietrangelo established that his case presented an important question of federal law that should be settled by this Court, namely the construction of the Oath and the Convict and Remove Clauses of the Constitution in light of the Respondent Senators' ("Senators") violations of those Clauses. The Senators' Brief in Opposition failed to rebut Pietrangelo's Petition.

First, the Senators' entire Brief, rather than opposing the granting of certiorari, actually supports it, in that it argues the *merits* of this case, *i.e.*, issues like standing, political question, and justiciability. Inasmuch as this Court has never construed the Oath and the Convict and Remove Clauses, in the context of the facts of President Clinton's Impeachment Trial, for the Senators to argue the merits of this case in their Brief *to this Court* is to admit that those merits need to be argued *to this Court* – which requires the granting of certiorari. If the Senators can argue the merits of the case before this Court, justice and fair play demand that Pietrangelo – who could only argue reasons for the granting of certiorari, and not the merits of the case, in his Petition – should also be given the opportunity to argue the merits by the granting of certiorari.

And, indeed, Pietrangelo can readily argue the merits of this case. In essence, the Senators' Brief position is that, yes, the 32 Senators demonstrably untruly and unfairly voted President Clinton "not guilty" as to the impeachment articles, and that, yes, the Senate as a whole communicated a judgment of "not guilty" to the House of Representatives even though two-thirds of the Senate demonstrably believed President Clinton "guilty," but, "too bad" and "so what," the

Senators cannot be questioned by anybody about it, including by this Court -- the ultimate defender and interpreter of the Constitution -- much less by a mere citizen like Pietrangelo. However, not only do the cases cited by the Senators *not* oppose review by this Court of the Senators' violations, but, as Pietrangelo stated in his Petition, such review by this Court is necessary for the restoration of all three of the branches – particularly the Judicial Branch.

Art. I, § 3, cl. 6 required that the Senators be on Oath when they voted on the impeachment articles. U.S. Const., art. I, § 3, cl. 6. An "oath" is defined as an "attestation by which a person . . . is bound in conscience to perform an act faithfully and truthfully." Black's Law Dictionary 1071 (6th Ed. 1990). The Oath Clause was inserted into the Constitution by Gouverneur Morris, who believed that, with the Oath, "there could be no danger that the Senate would say untruly on their oaths that the President was guilty [or not guilty] of crimes or facts . . . ." The Records of the Federal Convention of 1781, M. Farrand ed., v. 2, pp. 65-66 (Rev. Ed. 1966). The impeachment mechanism was created, as James Madison and George Mason stated, as the provision "for defending the Community ag[ain]st the incapacity, negligence or perfidy of the chief Magistrate [,]" so that no man is above Justice, particularly that man who can "commit the most extensive injustice." *Id.*, at 65. Or, as this Court has stated, "the Constitution admits that [the President] may do wrong, and has provided, by the proceeding of impeachment, for his trial for wrong-doing, and his removal from office if found guilty." Langford v. United States, 101 U.S. 341, 343 (1879). Clearly, the 32 Senators had a constitutional duty to vote "guilty" as to the impeachment articles, because, based on the irrefutable evidence of their Censure, they believed that President Clinton committed perjury and obstructed justice. Our democratic system and the separation of powers depended on that duty. But the Senators clearly violated that duty.

The Senators argue that *Nixon v. United States*, 506 U.S. 224 (1993), prevents this Court's review of the Senators' actions. However, that argument is incorrect. The irrefutable meaning of *Nixon's* holding is that the Senate has the sole power to try

impeachments and that this Court may not review that trial, *as long as* the "three very specific requirements" (including the Oath and Two-Thirds Vote for Conviction) "that the Constitution does impose on the Senate when trying impeachment" are met. *Id.*, at 225-226, 230. However, if those requirements are not met, *Nixon* states, "courts possess power to review either legislative or executive action that transgresses identifiable textual limits." *Id.*, at 238. "As we have made clear, 'whether the action of [either the Legislative or Executive Branch] exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.'" *Id.*, at 239 (*quoting Baker v. Carr*) (citation omitted) (brackets in original quote). Clearly, this Court has the power *and* the responsibility to review whether the Senators violated the Oath and the corollary Duty to Convict and Remove. Also, thus, under *Nixon*, the Senators' "nonjusticiable political question" argument is also rendered inapposite.

The Senators also argue that the Speech or Debate Clause prevents Pietrangelo from seeking to question the Senate and its Members about their votes in President Clinton's Impeachment Trial. First of all, Pietrangelo is clearly not seeking physically to "question" the Senators about their vote, although he is "challenging" their vote as being unconstitutional. Pietrangelo is not questioning, or inquiring into, and does not need to inquire into, the motivations of any Senators – which is forbidden by the Speech or Debate Clause, *see United States v. Brewster*, 408 U.S. 501, 513 (1972) – because the 32 Senators whose votes are at issue already provided Pietrangelo with an irrefutable public statement of their belief as to President Clinton's guilt as to the impeachment articles – *i.e.*, those Senators sponsored their Censure, in which they stated that President Clinton gave false testimony and impeded evidence in a trial. Second, this Court has *never* yet addressed whether a situation such as presented in this case -- where Members of Congress have violated specific constitutional provisions designed to maintain the separation of powers, and there is no one else to sue but the Members and no other remedy available -- renders the Speech or Debate Clause applicable, and this Court has said so on two occasions. *See Powell v.*

McCormack, 395 U.S. 486, 506, fn. 26 (1969) (where this Court reviewed Congressional violation of the Qualifications Clause); and *Kilbourn v. Thompson*, 103 U.S. 168, 204-205 (1881). Moreover, this Court's Speech or Debate Clause cases reinforce the principle that this Court may review Congressional violations of constitutional provisions relating to separation of powers. *See United States v. Brewster*, 408 U.S., at 509; and *Kilbourn v. Thompson*, 103 U.S., at 199. Clearly, it is at least *unsettled* whether Speech or Debate Clause immunity applies to Pietrangelo's suit, and, thus, this Court has reason to hear this case.

The Senators also argue that Pietrangelo lacks standing to assert his case. First of all, this Court has never yet addressed whether the particular injury asserted by Pietrangelo – deprivation of rule of law, equal protection and justice, due process, and democracy, as a result of the Senators' causing President Clinton to be "above the law" – is a constitutional, concrete, in-fact injury which provides him standing, or is merely a generalized grievance. Therefore, review by this Court to settle the question is clearly appropriate.

Second, even under this Court's current standing doctrine, the injury asserted by Pietrangelo does qualify as cognizable injury, for two reasons. First, since impeachment is the (sole) mechanism for holding the President accountable to the law (realistically, the President, as chief law enforcement officer, and as the Executive, will never be prosecuted), according to the express statements of the Founders and this Court ("no man is above the law"), it necessarily follows that the President actually has to be subject to the impeachment process, *via* the Senators' voting truthfully whether he is guilty or not, to be under the law. It necessarily follows, in turn, that there has to be a mechanism for enforcing the Senators' Oath, should there be a clear violation of it (if there is no clear violation, there can be no mechanism, because the trial is committed to the Senate exclusively, per *Nixon*, *supra*). It necessarily follows, in turn again, that a citizen suit before this Court is that mechanism for remedying a clear violation of the Oath. This Court, because the other two branches have disqualified themselves by their violations.

A citizen, because, again, the other two branches are disqualified, and some one must have standing. Although that no one would have standing is not necessarily a reason to find standing, *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 228 (1974), in this case it is, because this Court could hardly have stated that "no man is above the law" for two-hundred years only to say, now that that principle has been put to the test, that it is not true and that, in fact, there is no mechanism for holding the President accountable because "no one has standing." No President would ever really be in jeopardy of being convicted and removed if that were the case – which is exactly what President Clinton and the 32 Senators who untruly voted for him are hoping for, since, in his case, his perjury and obstruction of justice were plainly evident and admitted by the 32 Senators.

Second, Pietrangelo has clearly alleged a personal stake in the outcome of this case -- deprivation of rule of law, equal protection and justice, due process, and democracy. If Pietrangelo, or any other American, committed perjury and obstruction of justice, he would not only be subject to trial and conviction, but he would most likely be tried and convicted (as evidenced by the number of Americans who are each year). Yet, President Clinton, by pure virtue of his office as President and by virtue of the violation of the Senators of the Oath and Duty to Convict and Remove Clauses, is immune from that jeopardy and penalty. That is irrefutably contrary to the philosophy behind the establishment of the Constitution. As Montesquieu, from whom the Founders borrowed, put it, "[L]iberty is the right to do everything the laws permit; and if one citizen could do what they forbid, he would no longer have liberty because the others would likewise have the same power." The Spirit of the Laws, A. Cohler *et al.* eds. & trans., p. 155 (1989). Or, as President John Adams put it:

> The body politic is formed by a voluntary association of individuals. It is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in

> framing a Constitution of Government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them, that every man may, at all times, find his security in them.

The Works of John Adams, C. Adams ed., v. 2, pp. 219-220 (1851). The Oath and Duty to Convict and Remove Clauses thus provide a direct cause of action for any citizen for their violations, because each citizen, with the compact being broken, has lost his liberty, and is entitled to restore it.

Pietrangelo also may seek redress under the Fifth Amendment. The Fifth Amendment provides a direct cause of action for government violations of a person's equal protection and due process rights. *See Davis v. Passman*, 442 U.S. 228, 229 (1979). The Senators' exempting President Clinton from the operation of the law while leaving Pietrangelo (and all other citizens) subject to it, merely because President Clinton is President and the Senators' ally, both arbitrarily discriminates against Pietrangelo and deprives him of due process, as much as if the Senators had passed a law treating Pietrangelo differently from other citizens or from the Senators and President Clinton because he is white and catholic, or because the Senators simply did not like him. The Senators' actions make ordinary, hard-working, law-abiding citizens feel like their lives and contributions to society intrinsically do not mean anything, or as much, as, say, a popular politician's (even though that politician is, for example, a draft-dodger and pot-smoker) – the same feeling that a serf in England felt under some "god-king" who enjoyed popularity among nobles and certain cliques and who could do no wrong and engaged in every wrong.

Standing for Pietrangelo, directly under the Oath and Duty to Convict and Remove Clauses, and under the Fifth Amendment, is completely consistent with this Court's standing cases. First, the type of standing that this Court recognizes in cases like *Schlesinger*, *supra*, is meant to provide a "working modus operandi" for our society and government. As any reasonable person will recognize, because government is composed of humans, and humans are

imperfect and not omnipotent, any government of, for, and by the people will occasionally make mistakes or have differences of opinion with its citizens. If every citizen could sue for every little mistake or difference of opinion, government would be so burdened as to be incapable of performing. Thus, generalized grievances are not actionable, because, although the mistake or disagreement has occurred, the general structure of the government -- *i.e.*, the three branches -- is still intact, and is still providing the overall, fundamental, values of government. However, in this case, this Court is not dealing with a mistake within the intact structure of the three branches, but is dealing with a definitional break in the structure itself, because President Clinton has assumed the powers of all three branches and has been allowed to do so by the Senators. Moreover, this case is different from *Schlesinger*, in which the petitioners were challenging the reserve status of several Members of Congress. The power of the President is substantially far greater than the power of several lone Members of Congress, the constraint of whose independence by their alleged violation of the Incompatibility Clause was never actually established and was, therefore, truly abstract. *Schlesinger v. Reservists*, 418 U.S., at 225. The structure of the branches was never really affected. In this case, the President clearly violated the constitutional system, and the injury to every citizen is direct, immediate, concrete, and conspicuous. It is also very real, as opposed to abstract, and very judicially manageable, as opposed to amorphous, since this Court itself has spent two-hundred years breathing life into its supporting principle that "no man is above the law." Clearly, Pietrangelo has standing to assert his case.

Finally, in opposing the granting of certiorari, the Senators argue that this case is not an exceptional one meriting this Court's taking hold of it before the Court of Appeals has rendered its judgment. This argument is also incorrect. This case is the walking definition of "exceptional." It deals with the most fundamental values of this Nation and with the powers of all three of the branches. If Pietrangelo's argument succeeds, President Clinton will be removed. If Pietrangelo's argument fails, this Nation will have to finally accept a perjurer, an obstructer of justice, and an alleged

rapist as its President. Whatever is to be the ultimate outcome of this case, it is best to have it decided now with the greatest of dispatch -- which would require that this Court, the court best equipped to answer constitutional questions, hear it immediately -- rather than to leave it yo-yoing in the courts below. There is no question that this Court will have to decide whether or not to hear it, anyway, because it is at its front door already. Finally, this Court could easily decide this case, since it is virtually ready-made, the Censure and the facts of the impeachment trial already being a matter of public record and judicially noticeable by this Court. Clearly, this case is begging to be heard.

CONCLUSION

For the foregoing reasons, the Senators' Brief in Opposition is not well-taken, and certiorari should be granted to Pietrangelo.

Respectfully submitted,

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